

IsraelDavidLLC

T 212.739.0622

W davidllc.com

17 State Street, Suite 4010  
New York, NY 10004

**Via Electronic Filing**

May 11, 2023

Honorable Judge Nelson S. Roman, United States District Judge  
United States District Court - Southern District of New York  
The Hon. Charles L. Brieant Jr.  
Federal Building and United States Courthouse  
300 Quarropas Street  
Courtroom 218  
White Plains, New York 10601-4150

**Re: *Tyrnauer v. Ben & Jerry's Homemade, Inc.*, No. 7:23-cv-1877-NSR**

Dear Judge Roman:

We are counsel for Plaintiff Dovid Tyrnauer (“Plaintiff”). In accordance with Rule 3.A.ii. of Your Honor’s Individual Practices in Civil Cases, we write in response to Defendant’s request for a pre-motion conference regarding its proposed motion to dismiss Plaintiff’s class action complaint (ECF #13).

Plaintiff believes that the current complaint adequately states a claim for relief and is strong enough to withstand Defendant’s anticipated motion to dismiss. Contrary to Defendant’s slanted summary of the complaint’s allegations and the relevant law, the complaint contains ample factual allegations plausibly suggesting that Defendant publicly represented that its ice cream products were ethically sourced and that its supply chain did not employ child labor, much less migrant child labor. The complaint likewise contains factual allegations plausibly alleging that these affirmative representations were not true, were material to Defendant’s customers’ decisions to purchase its products, and that unsuspecting consumers substantially overpaid for Defendant’s products based on these representations. Federal courts in this Circuit and throughout the country have routinely sustained complaints containing similar, albeit less solid, factual allegations and claims.

Nonetheless, to conserve both judicial resources and Defendant’s resources, Plaintiff desires to amend the complaint to make the pleading even stronger and address Defendant’s purported concerns. In that regard, Fed. R. Civ. P. 15(a)(1)(B) permits a party to “amend its pleading once as a matter of course” within “21 days after service of a motion [to dismiss] under Rule 12(b).” Here, inasmuch as Plaintiff is prepared to use his one “matter of course” amendment

*prior* to Defendant's filing of any motion to dismiss, Plaintiff respectfully requests that the Court grant Plaintiff 30 days to file an amended complaint.

Respectfully Submitted,

/s/ Israel David

Israel David

Cc: All Counsel by ECF